STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs

MSC No.

CLEVELAND WILLIAMS,
Defendant-Appellant,
/

Court of Appeals No. 239662
Lower Court No. 01-7419

126956

APPELLEE'S SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANT'S APPLICATION FOR LEAVE TO APPEAL

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The People accept Defendant's jurisdictional statement.

COUNTERSTATEMENT OF QUESTION

I.

MCL §780.131 requires that an inmate be brought to trial within 180 days after the Department of Corrections causes a letter to be delivered by certified mail to the prosecuting attorney, notifying the prosecutor of pending charges against an inmate and containing a request for disposition. Here, the record shows that the earliest notice the prosecutor received was an oral motion for speedy trial made two months before the court set a date for trial, and five months before the trial court's initial dismissal on speedy trial grounds one day after the prosecutor received a written motion to dismiss. Did the trial court err in reconsidering its ruling and reinstating the case?

Trial Court said: *No.*

Court of Appeals said: *No.*

Defendant says: *Yes.*

People say: *No.*

COUNTERSTATEMENT OF FACTS

The People rely upon their original Brief in Opposition for their Counterstatement of Facts, with the following additions:

On the prosecution's appeal, the Court of Appeals vacated the trial court's order of dismissal on grounds that the prosecution had insufficient notice of the hearing, and remanded the cause to the trial court for reconsideration,[1] directing its attention to the cases of *People v Chavies,*[2] *Barker v Wingo,*[3] and *People v Grimmett.*[4] On remand, the trial court reconsidered its earlier ruling, and denied Defendant's motion to dismiss.[5]

The record on remand discloses that the earliest actual notification of any request for disposition that the prosecution received came on August 10, 2001, in the form of an oral notice that counsel intended to file a speedy trial motion sometime in the future.[6] Two months later, on October 12, 2001, the court set the matter for trial on January 9, 2001, with the agreement of the defense.[7] The earliest written notice that the prosecution received of any request for disposition of the matter came on January 8, 2002, in the form of a written motion to dismiss on speedy trial grounds; the

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[1]COA #239662, Order of June 6, 2003.

[2]*People v Chavies,* 234 Mich App 274 (2000).

[3]*Barker v Wingo,* 407 US 514, 92 S Ct 2182, 33 L Ed 2d 101 (1972).

[4]*People v Grimmett*, 388 Mich 590 (1972).

[5]Wayne CirCt #01-07419, Order of October 3, 2003.

[6]M, 10/3/03, 24-25.

[7]Final Conference, 10/12/01, 5.

following day, January 9, 2002, the trial court entered an order granting Defendant's motion — an order which it reconsidered and vacated on remand.[8]

Subsequently, the Court of Appeals entered an order dismissing the prosecution's appeal and remanding the cause for trial.[9]

The matter is now before the Court on the Defendant's application; on March 11, 2005, this Court directed the clerk to schedule the matter for oral argument on the application, and invited supplemental briefs from the parties.[10]

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[8]Wayne CirCt #01-07419, Order of October 3, 2003; M, 10/3/03, 48-58.

[9]COA #239662, Order of July 9, 2004.

[10]MSC #126956, Order of March 11, 2005.

ARGUMENT

I.

MCL §780.131 REQUIRES THAT AN INMATE BE BROUGHT TO TRIAL WITHIN 180 DAYS AFTER THE DEPARTMENT OF CORRECTIONS CAUSES A LETTER TO BE DELIVERED BY CERTIFIED MAIL TO THE PROSECUTING ATTORNEY, NOTIFYING THE PROSECUTOR OF PENDING CHARGES AGAINST AN INMATE AND CONTAINING A REQUEST FOR DISPOSITION. HERE, THE RECORD SHOWS THAT THE EARLIEST ACTUAL NOTICE THE PROSECUTOR RECEIVED WAS AN ORAL MOTION FOR SPEEDY TRIAL MADE TWO MONTHS BEFORE THE COURT SET A DATE FOR TRIAL, AND FIVE MONTHS BEFORE THE TRIAL COURT'S INITIAL DISMISSAL ON SPEEDY TRIAL GROUNDS ONE DAY AFTER THE PROSECUTOR RECEIVED A WRITTEN MOTION TO DISMISS. THE TRIAL COURT DID NOT ERR IN RECONSIDERING ITS RULING AND REINSTATING THE CASE.

Standard of Review

This Court has scheduled the matter for oral argument on the application, directing the parties to address the question of whether *People v Chavies*,[11] and its holding that MCL §780.131 does not apply to defendants who facing a consecutive sentence for an offense committed while on parole, was wrongly decided.[12] This question — and any ancillary questions presented as a result — are questions of law, which the Court reviews *de novo*.[13]

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[11]*People v Chavies*, 234 Mich 274 (2000).

[12]As the issue involves a substantive right of the accused, and affects the jurisdiction of the court, this Court should resolve any conflict between the statute and court rule in favor of giving effect to the mandates of the Legislature — particularly since the court rule appears to be drafted to be consistent with the statute. *Const 1963*, Art 6, §5. *See, eg, McDougall v Schnaz*, 461 Mich 15, 26-27 (1999); *People v Conat*, 238 Mich App 134, 163 (1999).

[13]*See, eg, People v Barbee*, 470 Mich 283, 285 (2004); *People v Krueger*, 466 Mich 50, 53 (2002); *see generally*, *People v Carpentier*, 446 Mich 19 (1994).

Discussion

The People will largely rest upon the arguments in their original Brief in Opposition for the application of *People v Chavies*[14] to this case. The *Chavies* holding does, after all, make perfect logical sense in dealing with the problem of untried charges, by construing the statute to avoid the draconian sanction of dismissal in cases in which the only discernible harm to the inmate — a failure to obtain the benefit of concurrent sentencing — is not relevant. Moreover, the holding in *Chavies* is consistent with the precedent of this Court, holding that the statute has no application in cases where the defendant is facing a consecutive sentence.[15] And as construing a statute to avoid absurd results is within the province of the judiciary,[16] the rule in *Chavies* appears within the court's proper authority.

However, the People acknowledge that the *Chavies* holding does extend beyond the literal wording of the statute, and that this Court may wish to explore how to apply the law in a manner more in keeping with the language that the Legislature chose to employ: the Legislature did, after all, carve two exceptions to the general rule it adopted, and it is not unreasonable to presume that they could add exceptions if they deemed it appropriate. Given this Court's charge, in cases of statutory construction, to discern and implement the intent of the Legislature by reading the plain

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[14]*People v Chavies, supra.*

[15]*See, eg, People v Smith*, 438 Mich 715, 717-718 (1991), ovrlg *People v Woodruff*, 414 Mich 130 (1982).

[16]*See, eg, Franges v General Motors*, 404 Mich 590, 612 (1979); *Charboneau v Beverly Enterprises*, 244 Mich App 33, 40-41 (2000).

wording of a statute according to its own terms,[17] it would not be an unreasonable reading of the plain terms of the statute to apply them to all cases — excepting two specific exceptions which the Legislature has chosen to exempt from its terms. Therefore, in the event that this Court chooses to overrule the Court of Appeals holding in *Chavies*, and its own holding in *People v Smith*,[18] and construe the statute in a manner more consistent with the precise wording of the statute, the following construction is more in keeping with the Legislature's enactment than the one Defendant has proposed:

A. Nothing in the record suggests that the prosecution ever received notification from the Department of Corrections of the place of Defendant's imprisonment and a request for disposition as required by MCL §780.131.

MCL §780.131 provides, as Defendant correctly notes, only two exceptions to the general rule requiring that an inmate of a correctional facility "be brought to trial within 180 days": cases in which a criminal offense is committed by an inmate "while incarcerated in the correctional facility;" and cases in which a criminal offense is committed by an inmate who has "escaped from the correctional facility" and "before he or she has been returned to the custody of the Department of

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[17]*See, eg, People v Morey*, 461 Mich 325, 330-331 (1999); *Murphy v Michigan Bell*, 447 Mich 93, 98 (1993).

[18]*People v Smith, supra* at 438 Mich 717-718.

Corrections."[19] Thus, Defendant reasons, the statute applies to offenses committed by one on parole — and, therefore, this Court should dismiss the case against him.

If, however, this Court is of a mind to depart from the rule of *People v Chavies*, taking its direction from the Legislature and enforcing the statute precisely as written, it must also give effect to the remainder of the statute. And aside from adopting its 180-day limitation,[20] the statute contains several additional requirements before dismissal is warranted — none of which have occurred in this case:

- The Department of Corrections must "cause[] to be delivered a notice of the inmate's place of imprisonment, and a request for final disposition of the outstanding charge."[21]
- The Department of Corrections must also inform the prosecutor of the prisoner's existing term of commitment, time already served, time remaining to be served, amount of "good time or disciplinary credits earned," and any matters relevant to parole eligibility or action.[22]

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[19]Both of these exceptions require the sentencing court to impose a consecutive sentence for the new offense. *See, eg,* MCL §§768.7a(1), 750.193.

[20]As we shall see below, this requires commencement, not completion, of action on the untried offense. MCL §780.133.

[21]The language of the statute suggests, but does not literally require, that this "request" would come from the inmate — a practice which would conform to the practice under the Interstate Agreement on Detainers. As we shall see, however, the Court need not address this aspect of the statute at present, since it is unnecessary to the disposition of the case at hand.

[22]Though its purpose is not articulated in the statute, it is likely that this portion of the Law was intended to allow the prosecutor to make an informed decision about whether to proceed on any outstanding charge: if a defendant serving a 35-to-50 year sentence for robbery still has 30 years to serve on his minimum sentence, for example, an intelligent prosecutor may well elect to forego the trouble and expense prosecuting him on an outstanding charge of felonious assault; on the other hand, the same prosecutor may wish to push ahead on a pending robbery charge against a defendant who is about to be released after serving a 2-to-15 year sentence for second-degree home invasion.

- The Department of Corrections must deliver the written notice, and accompanying informational statement, "by certified mail."[23]

If we are construing the statute to be read as written, then it follows that we must give effect to the entire body of the statute,[24] rather than selecting those portions which best comport with the interests of one side or the other. And giving effect to the entire statute, we see that Defendant has provided no basis for dismissing the charges against him: there is nothing in the record to support a finding that the Department of Corrections ever notified the prosecutor of Defendant's place of imprisonment, nor delivered a request for disposition of the charge in question; nothing in the record supports a finding that the Department of Corrections delivered a statement indicating the particulars of Defendant's commitment, or the time remaining on his sentence; and nothing in the record suggests that any such notice was delivered by certified mail. As the Legislature has specified a means for ascertaining the date of notification with precision — and a delivery which has not occurred cannot be imputed until it *does* occur[25] — Defendant's motion should fall on its premise, since the event triggering application of the 180-day rule never occurred.

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[23]Among other things, this provision eliminates any question of when a prosecutor "knew, or should have known" about the pendency of any outstanding charges, by providing a specific date on which notice was received — and a specific person in a specific prosecutor's office who was notified.

[24]*See, eg, People v Morey, supra* at 330-331; *Gebhardt v O'Rourke*, 444 Mich 535, 542 (1994).

[25]*See, eg, Fex v Michigan,* 507 US 43, 52, 113 S Ct 1085, 122 L Ed 2d 406 (1993); *People v Bowman,* 442 Mich 424, 428-429 (1993); *People v Sinclair,* 247 Mich App 685, 687 (2001).

Accordingly, it appears that the trial court properly denied Defendant's motion to dismiss — albeit, for different reasons than a strict reading of the statute would warrant. In any event, however, as the lower court reached the right result, this Court should let the decision stand, and remand the cause for trial.

B. Even excusing the lack of certified notice by the Department of Corrections, Defendant acknowledges that the earliest formal notice to the prosecution of a request for the disposition of his pending charge was either an oral motion for speedy trial made at a court hearing within two months of the Final Conference at which trial was scheduled, or a written motion to dismiss filed the day before trial was set to commence, and within 180 days of his initial oral motion.

While the language of MCL §780.131 appears to command that "the inmate shall be brought to trial within 180 days" after the prosecutor receives, by certified mail, notice of the pending charges and a request for disposition, it is MCL §780.133 which provides the enforcement sanctions. And the latter statute does not require trial, but rather a commencement of action within 180 days, on pain of dismissal.[26]

As we have seen above, the prosecution does not appear to have received any of the required notices which trigger the application of the 180-day rule in the first place: in fact, at the remand hearing, defense counsel himself acknowledged that the prosecutor's first written notice of a "request for disposition" came the day before trial, when the defense filed its motion to dismiss; and the

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[26]*See, eg, People v Hendershot*, 357 Mich 300, 303-304 (1959); *People v Smith,* 143 Mich App 122, 127 (1985); *People v Freeman*, 122 Mich App 260, 263, 265 (1982).

earliest notice of what the statute might recognize as a "request for disposition" came during an oral motion made in court on August 10, 2001.[27] Both "notices" came well after the commencement of action in this case — and, in fact, the trial-day dismissal came within five months after the oral notice in August, less than 180 days from the earliest date Defendant can cite as providing the requisite notice under MCL §780.131.

Accordingly, even if we excuse the lack of certified mailing, it appears that the record contains nothing to warrant dismissal, and this Court should remand the cause for trial.

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[27]M, 10/3/03, 23-25.

RELIEF

WHEREFORE, this Court should affirm the trial court's order reinstating charges against Defendant, and remand the cause for trial.

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